HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.518 of 2007

Between:

Kavali Pochamma

… Appellant

And

The Regional Joint Commissioner,
Multi-Zone III, Endowments Department,
Boggulakunta, Hyderabad and two others.

… Respondents

::JUDGMENT::

Counsel for the appellant: Shri N. Guru Gopal

Counsel for respondent Nos.1 & 2: Government Pleader for Endowments.

June 26, 2007

Per G.S. Singhvi, CJ

Having failed to persuade Assistant Commissioner, Endowments, Ranga Reddy District (respondent No.2 herein), Regional Joint Commissioner, Endowments Department, Multi-Zone III, Hyderabad (respondent No.1 herein) and the learned Single Judge to accept her status as 'landless poor' in terms of Section 82 (2) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act'), the appellant has preferred this appeal and prayed for setting aside order dated 30.4.2007 passed

by the learned Single Judge in Writ Petition No.26023 of 2006.

The appellant's husband Shri Kavali Mallaiah is said to be a tenant of land measuring Ac.3-09 gts. comprised in Survey No.148, Kompalli Village, Qutbullapur Mandal, Ranga Reddy District (for short, 'the subject land') belonging to Sri Balaji Venkateswara Swamy Temple, Alwal, Malkajgiri Mandal, Ranga Reddy District (for short, 'the Temple'). After the death of her husband, the appellant is said to be cultivating the land. In 1999, a proposal was initiated for sale of the subject land. In response to notice dated 1.12.1999 issued by the Commissioner, Endowments, the appellant filed objections and claimed that she is entitled to preference by being treated as 'landless poor person'. Her objection was rejected by the Commissioner. Writ Petition No.8573 of 2003 filed by the appellant was disposed of by the learned Single Judge of this Court on 31.7.2003. The operative part of that order reads as under:

> "Hence, the writ petition is disposed of with the following directions:
>
> a) if the petitioner wants her to be declared as a landless poor person, she shall submit an application in this regard as provided for under the Rules contained in G.O.Ms.No.379, dated 11.3.2003, within four weeks from today, before the jurisdictional Assistant Commissioner of Endowments. On such application being made, the Assistant Commissioner shall examine the same and pass appropriate orders, giving an opportunity to the petitioner as well as the Temple within 2 months thereafter.
>
> b) In the meanwhile, it shall be open to the respondents to ascertain the market value of the land for sale, either by collecting the comparative sale of similarly situated lands or by inviting bids or tenders;
>
> c) In case the petitioner is declared or adjudicated as landless poor person by the Assistant Commissioner of Endowments, she shall be given an option to purchase the land at 75% of the market value as ascertained by the respondents.
>
> d) If the petitioner is not willing to purchase the land, she shall be given an opportunity to continue as lessee, on payment of 75% of the market rent as lease amount, which in turn, shall be ascertained either by collecting comparative figures or by putting the same to auction.
>
> e) It shall also be open to the respondents to invite a finding from the concerned revenue authorities as to whether the land is fit for

cultivation. Such a finding by the revenue authorities will be treated as relevant to determine the rights of the petitioner to continue as lessee.

f) STATUS QUO obtaining as on today shall be continued, and the petitioner is also directed not to alter the nature of the land or to induct 3rd parties.

Soon thereafter, the appellant filed petition under Section 82 of the Act for being declared as 'landless poor'. The same was dismissed by respondent No.2 vide his order dated 27.10.2005, the relevant portions of which are reproduced below:

> It is seen that the lease of land to the applicant is not approved by competent authority under the provisions of the APC & HRI and Endowments Act 30/87. The Hereditary Trustee and the Executive Officer have received the rentals from the applicant as per their whims and fancies **without determination of lease amount, lease period and terms of lease by the competent authority.** It is evident that the applicant is not a valid leaseholder of the temple land.
>
> As regards the claim of applicant as landless poor, Section 82 of the Act, 30/87 stipulates that the claimant as landless poor shall be a subsisting leaseholder having lease for (6) years continuously prior to the date of commencement of the Act i.e. prior to 28.5.1987. In the case of the applicant, it is seen that the rental receipts from 1982 are only filed which shows that she was not holding lease for (6) years prior to the date of commencement of the Act. As such the applicant could not fulfil the pre-condition of her claim as landless poor as per Section 82 of the Act.
>
> The proviso u/s.82 for the claim as landless poor applies to agriculture lands only and not to those lands which have been developed into urban property. The M.R.O., Qutbullapur has stated in his letter that as per the revenue records the land is agricultural land. It is ascertained from HUDA that as per their records, the land is earmarked as conservative zone. The land of the temple at Kompally has been inspected by the undersigned. Though the land is classified as agriculture land in Revenue records, the location and condition of the land is quite different at the site. It is seen that so many real estate ventures like Jayabheri Constructions, Modi Constructions etc. have come up surrounding the temple land and internal B.T. Roads have been laid around the temple land. There is no cultivation at all in the temple land and the surrounding lands. Residential flats and houses have come up and are in progress in a rapid way. There is also no water source to these lands. The land is at a distance of
> ½ km. from highway leading to Nizamabad and 11 km. from Picket Bus-stand, Secunderabad. Viewed from any point, there is no

possibility of agricultural operations in the land and it has been developed into an urban property as on this day.

The applicant, who has no valid lease, who did not fulfil the pre-conditions stipulated u/s.82 of the Act as discussed above cannot claim as landless poor, more particularly when the land in question has been developed as urban property. I am also not convinced that, when the applicant is prepared to pay huge cost of the land in lump sum which runs into crores of rupees, she is to be regarded as landless poor.

In view of these circumstances, I am not inclined to accept the claim of the petitioner as landless poor as defined u/s.82 of the Act and accordingly the application of Smt.K. Pochamma, W/o.K. Mallaiah for declaration as landless poor in respect of land of Ac.3-09 gts. in Sy.No.148 of Kompally (V) belonging to Sri Balaji Venkateswara Swamy Temple, Alwal is rejected."

The appellant challenged the aforementioned order by filing revision under Section 92 of the Act, which was dismissed by respondent No.1 on the premise that the remedy available to the appellant was to file an appeal and not a revision.

Thereafter, the appellant filed an appeal, which was registered as Appeal No.6 of 2006. Respondent No.1 took cognizance of the factual matrix of the case projected before him and dismissed the appeal vide order dated 01.08.2006. The relevant portions of that order are extracted below:

" The original lease is to be considered and sub-rent division or partition among the family member of deceased tenant is not relevant to decide the issue of landless poor, as held by the Division Bench of Hon'ble High Court in various occasions. The extent of land held is Ac.3.09 and there is no subsisting lease in her favour.

The next point for consideration is financial status of the appellant. As already held, she is found so rich having capable of offering about 2 crores towards sale consideration. The appellant and admitted before Asst. Commissioner that she is having H.No.3-70 in Kompalli(V) admeasuring 200 sq. yards. This itself categorically establish that her annual income furnished at Rs.10,000-00 per year is ridiculous, false and baseless therefore the annual income of the appellant would be much more than 12,000-00. For this reason alone she is not entitled to claim the benefit u/s 82 of the Act for declaration as landless poor tenant.

The order of the Asst. Commissioner, Endowments

Department, R.R. Dist. goes to reveal that there are no Agricultural operations since last 3 years as real estate ventures are coming up surrounding the temple land and internal BT. Road have been formed around the temple land and that the land has been earmarked as conservating zone as per HUDA record and therefore the land is not more useful for Agricultural operations, and the appellant is having no valid lease in her favour and as such there is no subsisting lease in her favour.

The extent of land is Ac.3.09 and there is no valid and subsisting lease in favour of the appellant. It is further established that her annual income is more than 12,000-00 as she is capable of offering nearly 2 crores.

Under these circumstances, I hold that the appellant is not eligible to claim the benefit u/s 82 for declaration as landless poor and there are no valid grounds to interfere with the order of Asst. Commissioner, Endowments Department, R.R. Dist. issued in RC.NOC/2440/98 dt. 27.10.2005."

The learned Single Judge dismissed Writ Petition No.26023 of 2006 filed by the appellant and confirmed the order passed by respondent No.1 by recording the following observations:

"A perusal of the order of the second respondent would show that the petitioner herein deposed before the second respondent stating that she is having a house bearing No.3-70 in Kompalli Village admeasuring 200 square yards, which was acquired by parents of her husband. The petitioner also examined four witnesses in proof of her contention. After considering this evidence, the second respondent came to the conclusion that though the land is classified as agricultural land in revenue records, the location and condition of the land is altogether different and that there are many real estate ventures around the Temple land with internal B.T.Roads, and that there is no cultivation at all in surrounding lands and residential flats have come up. Therefore, a finding was recorded that there is no possibility of using the land for agriculture. In the appeal, the appellate authority – first respondent herein; found that there is no subsisting lease in her favour and that she is not a landless and poor person as her income is more than twelve thousand rupees per annum.

It is needless to point out that a person having tenancy in respect of the land admeasuring two and half acres of wet land or five acres of dry land and whose income is not more than twelve thousand rupees per annum is alone treated as a landless poor person for the purpose of Section 82 of the Endowments Act. Only in such case, the person would get the benefit of being continued as a tenant or exercising first option for purchase of the property. In this case, admittedly, the petitioner's husband was the tenant and any rights under the Tenancy Act get extinguished after coming into force

of Section 82(1) of the Endowments Act. Indeed, as held by the Supreme Court in **State of A.P. v. Nallamilli Ramireddi {(2001) 7 SCC 708 = AIR 2001 SC 3616}** the rights under Tenancy Act cannot defeat Section 82 of the Endowments Act. Further, as found by the appellate authority the petitioner was not having subsisting lease. Be it noted, so as to be a tenant for the purpose of Section 82 of the Endowments Act the first thing a person has to show that for six years prior to coming into force of Section 82(1) of the Endowments Act with effect from 26.08.2002, such person was the lessee. This was not pleaded or proved before the authorities. Further, these are disputed questions of fact and cannot be gone into in the Writ Petition."

Shri N. Gurugopal argued that concurrent negative finding recorded by respondent Nos.2 and 1 on the appellant's claim to be treated as 'landless poor' is vitiated by an error apparent inasmuch as both the officers considered irrelevant and extraneous factors and laid unnecessary emphasis on the offer made by her to purchase the subject land by paying 75% of the market price. He submitted that the appellant's ownership of house bearing No.3-70 in Kompalli Village is not relevant for determining her status. He criticised the order of the learned Single Judge by arguing that the same is devoid of reasons.

In our opinion, there is no merit in the submissions of the learned counsel. It is settled law that the power of judicial review vested in the High Court under Article 226 of the Constitution of India is not absolute and unbridled. This power can be exercised only if the Court is convinced that the action taken by the public authority or an order passed by quasi-judicial authority is without jurisdiction or in excess of jurisdiction or is vitiated due to violation of the rules of natural justice or suffers from an error of law apparent on the face of the record. The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the

procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari - **Syed Yakoob v. K.S. Radhakrishnan and others**[1], **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab**[2], **R.S. Saini v. State of Punjab**[3], and **Surya Dev Rai v. Ram Chander Rai**[4].

In the light of the above, we shall now consider whether the orders passed by respondent Nos. 2 and 1 are vitiated due to any

jurisdictional infirmity or an error of law apparent on the face of the record. In this context, it is apposite to mention that the appellant has neither averred nor the learned counsel argued that respondent No.2 did not have the jurisdiction to decide the application made by his client for being declared as 'landless poor'. Therefore, it is not necessary for us to consider the jurisdictional aspect of the orders impugned in the writ petition. If the appellant had questioned the jurisdiction of respondent No.2, she would have been non-suited by applying the doctrine of acquiescence.

The issue which remains to be examined is whether the concurrent finding recorded by respondent Nos.2 and 1 that the appellant is not a 'landless poor' is vitiated by an error apparent. A careful reading of orders dated 27.10.2005 and 01.08.2006 shows that both the officers i.e. respondent Nos.2 and 1made a detailed analysis of the evidence produced before them and held that the land in question was not cultivated for last three years and that the appellant did not have any subsisting lease. Learned counsel for the appellant could not draw our attention to any document from which it can be gathered that the subject land was cultivated or that the lease of his client was subsisting. Similarly, he could not controvert the observation made by respondent Nos.2 and 1 that a person who could offer to purchase the subject land by paying a sum of Rs.1,93,50,000/- or 75% of the market price (Rs.2 crores) cannot be treated as 'landless poor'. Therefore, we do not find any valid ground to interfere with orders dated 27.10.2005 and 01.08.2006 passed by respondent Nos.2 and 1 respectively and the discretion exercised by the learned Single Judge not to entertain the appellant's prayer. The appellant's offer to purchase the property (valued at Rs.2 crores in the market) by paying 75% of the market price totally belies her claim that she is a landless poor person. By no standard, a person having resources to purchase assets worth Rs.1.5 crores can be treated as 'landless poor' within the meaning of Section 82 of the Act.

The argument of Shri Gurugopal that the appellant's right to be treated as tenant cannot be extinguished by invoking Section 82 of the Act has been negatived by the learned Single Judge by relying on Section 82 (1) of the Act and the judgment of the Supreme Court in **State of A.P. v. Nallamilli Ramireddi**[5] and we do not see any reason to take a different view.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.993 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

June 26, 2007

C.V. NAGARJUNA REDDY, J

svs

---

[1] AIR 1964 SC 477

[2] AIR 1970 SC 61

[3] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[4] AIR 2003 SC 3044

[5] (2001) 7 SCC 708 = AIR 2001 SC 3616